

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GERALDINE F. CROFT *Administratrix of the
Estate of Thomas J. Goessling, Deceased, and
GERALDINE F. CROFT, in her own right,*

Plaintiff,

v.

NATIONWIDE INSURANCE COMPANY OF
AMERICA *a corporation,*

Defendant.

11cv0578

ELECTRONICALLY FILED

Memorandum Order

This is a breach of contract/bad faith action which was removed from state court (Allegheny County Court of Common Pleas) by defendant on May 3, 2011. Because on the face of the complaint, plaintiff only seeks to collect \$25,000.00 in unpaid accidental death benefits for defendant alleged breach of contract in failing to disperse these funds with an added bad faith claim, on May 6 2011, this Court issued a Rule to Show Cause on the issue of the jurisdictional threshold (amount in controversy).

On May 9, 2011, plaintiff's counsel submitted a sworn affidavit setting forth his belief (on behalf of plaintiff) that the "there is no reasonable probability that the recoverable damages in this case would exceed the sum of \$75,000.00." Doc. No. 4. Plaintiff's counsel has further agreed to remit any amount in excess of \$75,000.00 should plaintiff receive damages in that amount. Therefore, the affidavit submitted by plaintiff's counsel limits the recovery in this case to less than \$75,000.00. *Frederico v. Home-Depot*, 507 F.3d 188 (3d Cir. 2007).

Accordingly, for these reasons, the Court finds that it appears to a legal certainty that the plaintiffs cannot or will not recover the \$75,000.00 jurisdictional amount, and the Court is without jurisdiction to hear this case. *Samuel-Bassett v. Kia Motors America, Inc.*, 357 F.3d 392 (3d Cir. 2004).

Therefore, this case shall be remanded to the Court of Common Pleas of Allegheny County FORTHWITH. The Clerk shall mark the docket closed.

SO ORDERED this 10th day of May, 2011.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties